

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Richard L. Greist,
Plaintiff,

v.

Norristown State Hospital,
Department of Public Welfare
of the Commonwealth of
Pennsylvania, and
Chester County Court,
Defendants.

CIVIL ACTION
NO. 96-CV-8495

MEMORANDUM OF DECISION

McGlynn, J.

October , 1997

Before the court are two motions: (1) defendant Chester County Court of Common Pleas' ("Chester County Court") motion to dismiss pro se plaintiff's complaint; and (2) defendant Norristown State Hospital's ("NSH") motion for summary judgment. Because the court does not rely upon the extrinsic exhibits attached to NSH's motion, NSH's motion for summary judgment will be treated as a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons set forth below, the court will grant defendants' motions to dismiss as to all claims and all parties.

I. Background

In 1978, plaintiff Richard L. Greist killed his wife and their unborn child, and in the same incident, stabbed his grandmother and removed the eye of his daughter. In re Richard Greist, No. 1437 Philadelphia 1995, slip op. at 1 (Pa. Super. Ct.

Apr. 26, 1996). After a 1980 bench trial for one count of murder and two counts of attempted murder, plaintiff was found not guilty of all charges by reason of insanity. Id. On June 18, 1981, the Chester County Court ordered plaintiff to be involuntarily committed at Norristown State Hospital for a period not to exceed one year in accordance with Pennsylvania's Mental Health Procedures Act ("MHPA"), Pa. Stat. Ann. tit. 50, § 7304. Id. As provided by the MHPA, at or about the expiration of each one year period since 1982, the director of NSH has petitioned to recommit plaintiff for involuntary treatment, and the Chester County Court has granted all such petitions. Id. On August 13, 1996, the Chester County Court recommitted plaintiff for a period of 365 days, stating "that Richard Greist poses a clear and present danger to others, and that Richard Greist is severely mentally disabled and is in need of further inpatient treatment." In re Richard Greist, Misc. No. 120 P MT 1978, Order at 1 (Chester County Ct. of Common Pleas Aug. 13, 1996). In making its ruling, the Chester County Court credited the testimony of plaintiff's staff psychiatrist, Dr. Robert Bickel, Jr., M.D., who stated that if plaintiff were subjected to the same stressors as existed on the fatal evening in 1978, he would likely respond in a similar manner. Id. at 2 n.1. The Chester County Court also noted, but rejected, the opinions of two other experts. Id.

On December 23, 1996, plaintiff filed the instant action and thereafter withdrew his appeal of the recommitment order. In re Richard Greist, No. 3167 PHL 1996, Praecipe to Withdraw Appeal

(Pa. Super. Ct. Jan. 27, 1997).

II. Discussion

Four causes of action are discernable among the allegations of plaintiff's pro se complaint: (1) a claim under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131-134, arising from the Chester County Court's and NSH's denial of outpatient treatment to plaintiff in alleged violation of the integration mandate of the ADA; (2) a 42 U.S.C. § 1983 due process and equal protection claim for release from involuntary commitment; (3) a 42 U.S.C. § 1983 due process and equal protection claim based on NSH's failure to provide plaintiff with training to overcome his dyslexia; and (4) a 42 U.S.C. § 1983 due process claim for denial of access to the courts.

Plaintiff asks the court to: (1) declare that defendants' actions violate the ADA and his constitutional and civil rights; (2) grant preliminary and permanent injunctive relief enjoining defendants' illegal actions; (3) order defendants to provide outpatient care services to plaintiff as well as training for his dyslexia; and (4) award him compensatory damages, costs and attorney's fees.

Plaintiff's ADA and § 1983 claims for release from involuntary commitment will be dismissed for lack of subject matter jurisdiction under the Rooker-Feldman doctrine, and alternatively under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted under both the ADA and 42 U.S.C. § 1983, on the basis of Eleventh Amendment principles

of sovereign immunity for the § 1983 claim, and under the doctrine of Younger abstention for both the ADA and § 1983 claims. Plaintiff's § 1983 cause of action for training to overcome his dyslexia will be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Lastly, the court will dismiss plaintiff's access to the courts claim as moot.

A. Rooker-Feldman Doctrine

The Rooker-Feldman doctrine precludes federal action if the relief requested would effectively reverse a state court's decision or void its ruling. FOCUS v. Allegheny County Ct. of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996). The doctrine applies only when in order to grant the relief sought, a federal court must either determine that a state court's judgment was erroneously entered or must take action that would render that judgment ineffectual. Id. A federal court may hear general constitutional challenges to state rules if those claims are not "inextricably intertwined" with claims previously asserted in state court, i.e., the relief requested in the federal action cannot require a determination "that the state court decision is wrong or would void the state court's ruling." FOCUS, 75 F.3d at 840. Accordingly, a complaint which essentially appeals a final state court decision must be dismissed for lack of subject matter jurisdiction. Kirby v. City of Philadelphia, 905 F.Supp. 222, 225 (E.D. Pa. 1995).

In this instance, plaintiff seeks the same relief in federal

court that the Chester County Court denied him in its August 13, 1996 recommitment order, namely his release from involuntary commitment at Norristown State Hospital. He has framed his federal cause of action in terms of § 1983 and title II of the ADA.

Plaintiff's effort to recast ongoing state claims as federal causes of action is precisely what Rooker-Feldman prohibits. In the state proceedings, the Chester County Court granted NSH's Petition for Involuntary Treatment and ordered plaintiff's recommitment for a period of 365 days, denying his request for outpatient treatment. In re Richard Greist, Misc. No. 120 P MT 1978, Order at 1 (Chester County Ct. of Common Pleas Aug. 13, 1996). In this federal action, plaintiff seeks to nullify and indeed reverse the state court's action. Aside from his requests for dyslexia training, damages, attorney's fees and costs, the objective of plaintiff's federal claims is essentially the same as that addressed in his recommitment hearing -- release from involuntary inpatient treatment. Thus, the claims asserted by plaintiff in this action are inextricably intertwined with the issues of the state proceeding. The court will accordingly apply Rooker-Feldman to dismiss plaintiff's claims for release from involuntary commitment. See Kirby v. City of Philadelphia, 905 F.Supp. 222 (E.D. Pa. 1995).

B. Rule 12(b)(6) Dismissal for Failure to State a Claim

Under Rule 12(b)(6)'s failure-to-state-a-claim standard, the court may not dismiss a pro se complaint unless it can say with

assurance that under the allegations of the complaint, which the court holds to less stringent standards than formal pleadings drafted by lawyers, it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. McDowell v. Delaware State Police, 88 F.3d 188, 189 (3d Cir. 1996).

Both plaintiff and defendant Norristown State Hospital have included various exhibits with their motions, including an affidavit, reports documenting plaintiff's treatment history, and court orders and memoranda relating to plaintiff's involuntary commitment and the prior unsuccessful legal actions aimed at securing his release. In considering this aspect of the claim, the court will not rely upon submissions which fall impermissibly outside the pleadings, such as NSH's exhibit II ("Declaration of Judith O. Yoppi") and the NSH exhibits addressing plaintiff's treatment history. The court will, however, consider the submitted court documents, as they are public records which may be considered in reviewing a Rule 12(b)(6) motion. See In re Westinghouse Securities Litigation, 90 F.3d 696, 707 (3d Cir. 1996); Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n.2 (3d Cir. 1994)(in review of 12(b)(6) motion, court may consider pleadings, matters of public record, orders, exhibits attached to complaint and items appearing in record of case); Wallace v. Systems & Computer Technology Corp., No. CIV. A. 95-CV-6303, 1996 WL 195382, at *3 n.4 (E.D. Pa. Apr. 19, 1996)(categorizing unpublished Third Circuit opinion as public

record which may be considered in Rule 12(b)(6) dismissal).

1. Americans with Disabilities Act

Even if plaintiff's action were not barred by Rooker-Feldman, plaintiff has failed to state a valid claim under title II of the Americans with Disabilities Act. 42 U.S.C. §§ 12101-134. The thrust of plaintiff's ADA claim is that defendants Chester County Court and Norristown State Hospital have violated plaintiff's rights under the ADA by refusing to treat his mental illness in the most integrated setting possible as required by 28 C.F.R. § 35.130(d)(1993).¹

The ADA prohibits public entities from discriminating against qualified individuals with disabilities in the provision of services, programs, and activities.² 42 U.S.C.A. § 12132 (West 1997). ADA regulations require public entities to "administer services, programs, and activities in the most

¹ Plaintiff asserts that "Defendants [sic] willingness to provide inpatient services to Plaintiff Greist in an unnecessarily segregated mental health facility, rather than outpatient care services in his own community, violates the ADA's integration mandate." Pl. Compl. at 9, para. 32.

² Qualified individual with a disability is defined as:

an individual with a disability who, with or without reasonable modification to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

42 U.S.C.A. § 12131 (West 1995).

integrated setting appropriate to the needs of qualified individuals with disabilities." Helen L. v. DiDario, 46 F.3d 325, 332 (3d Cir.)(quoting 28 C.F.R. § 35.130(d) and noting that the regulation has the force of law), cert. denied, Pennsylvania Secretary of Public Welfare v. Idell S., -- U.S. --, 116 S.Ct. 64, 133 L. Ed. 2d 26 (1995).

Plaintiff fails to state a valid ADA claim on two grounds.

First, the ADA does not require public entities to make fundamental alterations in their programs.

A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

28 C.F.R. § 35.130(b)(7)(1997)(emphasis added).

"The test to determine the reasonableness of a modification is whether it alters the essential nature of the program or imposes an undue burden or hardship in light of the overall program." Easley v. Snider, 36 F.3d 297, 305 (3d Cir. 1994). Congress has stated that administrative or fiscal convenience is no justification for the provision of segregated services under title II of the ADA. Helen L. v. DiDario, 46 F.3d 325, 338 (3d Cir. 1995)(quoting H.R. Rep. 485(III), 101st Cong. 2d. Sess. 50. reprinted in 1990 U.S.C.C.A.N at 473). In this case, however, the Chester County Court recommitted plaintiff for inpatient treatment because of the "clear and present danger" he presents to others should he be

released. In re Richard Greist, Misc. No. 120 P MT 1978, Order at 1 (Chester County Ct. of Common Pleas Aug. 13, 1996). One purpose of the MHPA is to protect the public from dangerous, mentally ill persons. Pa. Stat. Ann. tit. 50, § 7102 (1969 & Supp. 1997) ("The provisions of this act shall be interpreted in conformity with the principles of due process to make voluntary and involuntary treatment available where the need is great and its absence could result in serious harm to the mentally ill person or to others."); see also Commonwealth v. Helms, 506 A.2d 1384, 1389 (Pa. Super. Ct. 1986)("The state must confine a mentally ill person who is dangerous to others in order to protect the welfare of the community."). To require state courts to release such individuals into the community would fundamentally alter the nature of Pennsylvania's involuntary commitment program by making an essential purpose of the program -- protecting the community -- impossible to accomplish. As a consequence, plaintiff's assertion that the ADA requires defendants to release him for outpatient services must be rejected.³

Second, plaintiff fails to show that he was wrongly discriminated against by reason of his mental illness. In Jeffrey

³ Moreover, the Third Circuit has stated that the ADA does not mandate the per se deinstitutionalization of the disabled. See Helen L. v. DiDario, 46 F.3d 325, 336 (3d Cir. 1995)(citing Pennhurst State School and Hospital v. Halderman, 451 U.S. 1, 24 (1981), for the proposition that the ADA does not require "community care" or "deinstitutionalization"); accord Conner v. Branstad, 839 F. Supp. 1346, 1357 (S.D. Iowa 1993)(concluding that "the ADA does not require deinstitutionalization of mentally disabled individuals").

v. St. Clair, the plaintiffs, involuntarily committed hospital patients who were acquitted of various criminal charges in Hawaii state courts, sought a preliminary injunction after their residential program was closed and they were transferred to a more restrictive setting. 933 F. Supp. 963, 966, 969 (D. Hawaii 1996). The plaintiffs based their ADA claim on 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(d), alleging that they were not being treated in the most integrated setting appropriate to their needs. Id. at 969. But the court denied the plaintiffs' request for a preliminary injunction, reasoning that they did not allege discrimination based on their mental disability, but only that they were not being sufficiently credited for progress in overcoming their respective illnesses. Id. at 970. "As such, the Plaintiffs fail[ed] to carry their burden of proof in showing that they were discriminated against on the basis of their 'disability.'" Id.

The reasoning in Jeffrey applies equally to plaintiff's complaint. Plaintiff asserts that the Chester County Court refuses to countenance the recommendations of his "treating psychiatrists, psychologists, and case workers [in violation of] the integration mandate of the Americans with Disabilities Act." Pl. Compl. at 4, para. 15(a). He is not challenging an arbitrary and discriminatory denial of services for which he is indisputably qualified. See, e.g., Helen L. v. DiDario, 46 F.3d 325 (3d Cir. 1995)(finding that plaintiff whose qualification for outpatient treatment was undisputed was improperly excluded for budgetary reasons). Rather, plaintiff challenges the Chester County Court's finding that he is

unqualified for outpatient services because of the "clear and present danger" he poses to others because of his mental illness. In re Richard Greist, Misc. No. 120 P MT 1978, Order at 1 (Chester County Ct. of Common Pleas Aug. 13, 1996). This is not a case of discrimination against a subgroup of persons within the class of qualified mentally disabled persons. To the contrary, this is a case where plaintiff's dangerousness belies his assertion that he is qualified for participation in an outpatient treatment program.

ADA regulations permit necessary eligibility limitations on participation in public programs.⁴ The appendix to the ADA's eligibility regulation states that public entities may utilize neutral rules that screen out individuals with disabilities "if the criteria are necessary for the safe operation of the program." 28 C.F.R. pt. 35, App. A, at 461 (1995); see, e.g. Doe v. Judicial Nominating Comm'n for the Fifteenth Judicial Cir. of Fla., 906 F.Supp. 1534, 1540-41 (S.D. Fla. 1995)(in order to protect the public, ADA "necessity exception" applies to judicial selection process to allow reasonable, narrowly drawn eligibility criteria

⁴ The relevant regulation states that

[a] public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

28 C.F.R. § 35.130(b)(8) (1997)(emphasis added).

which screen out, or tend to screen out individuals with disability). These regulations are due substantial deference by the court. Helen L., 46 F.3d at 331 (stating that regulations promulgated under title II of the ADA are entitled to substantial deference).

In the Third Circuit, a court must investigate two things in determining whether a program wrongly discriminates under the ADA: "(1) whether the plaintiff meets the program's stated requirements in spite of his/her handicap, and (2) whether a reasonable accommodation could allow the handicapped person to receive the program's essential benefits." Easley v. Snider, 36 F.3d 297, 302 (3d Cir. 1994). Pennsylvania's Mental Health Procedures Act makes insanity acquittees who pose "a clear and present danger to others" and are in need of further treatment ineligible for release from involuntary commitment. Pa. Stat. Ann. tit. 50, §§ 7301(a) & 7304(g)(4). The Chester County Court has already determined that plaintiff does not meet the stated requirement for release (i.e., non-dangerousness).⁵ Further, it is difficult to conceive of an accommodation by which highly dangerous insanity acquittees could be adequately supervised to prevent harm to others on an outpatient basis. Accordingly, plaintiff is unqualified under the ADA and

⁵ As noted by NSH in its brief, Def. NSH Mot. for Summ. Judg. at 3, the issue of plaintiff's dangerousness has already been determined by the state court, and plaintiff may not relitigate it here. O'Shea v. Amoco Oil Co., 886 F.2d 584, 591 (3d Cir. 1989)(federal courts must give the same preclusive effect to state court judgments as those judgments would be given in the courts of the state from which the judgment originated).

MHPA to participate in outpatient treatment pursuant to 28 C.F.R. § 35.130(b)(8) and Pa. Stat. Ann. tit. 50, § 7304.

For the above-mentioned reasons, the court alternatively dismisses plaintiff's ADA complaint pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

2. 42 U.S.C. § 1983

Plaintiff also fails to state valid claims for release from involuntary commitment and dyslexia training under 42 U.S.C. § 1983.

Defendants contend that, insofar as plaintiff seeks his release from involuntary commitment, plaintiff's § 1983 complaint is in fact a claim for habeas corpus. Def. Chester County Court's Mot. to Dis. at 8; Def. NSH's Mot. for Summ. Judg. at 5-6. The court agrees.

In Preiser v. Rodriguez, the Supreme Court held that "Congress has determined that habeas corpus [28 U.S.C. § 2254] is the appropriate remedy for state prisoners attacking the validity of the fact or length of their confinement, and that specific determination must override the general terms of § 1983." 411 U.S. 475, 490 (1973). The same analysis applies to those involuntarily committed in state mental institutions as well as to criminal prisoners. See Buthy v. Commissioner of the Office of Mental Health of New York State, 818 F.2d 1046, 1051-52 (2d Cir. 1987)(insanity acquittee could only challenge the fact of confinement by petitioning for writ of habeas corpus); Davis v. Hill, No. 86 C 4592, 1986 WL 355, at *2 (N.D. Ill. July 16,

1986)(Preiser analysis "applies to confinement in a state mental hospital as well as a state prison, since both cases involve detention in state custody where habeas corpus is the proper vehicle for release"); see also Souder v. McGuire, 516 F.2d 820, 823 (3d Cir. 1975)("There is no question about the appropriateness of habeas corpus as a method of challenging involuntary commitment to a mental institution."). As a result, plaintiff cannot challenge the fact or duration of his involuntary commitment through § 1983. The appropriate vehicle for that claim is habeas corpus, for which plaintiff must first exhaust his state remedies before proceeding to federal court.⁶

Plaintiff also argues that NSH's refusal to provide training to overcome his dyslexia violates the ADA and his due process, equal protection, and civil rights. Pl. Compl. at 6, para. 16(b). In a § 1983 action, two elements must be established: 1) the conduct in question must be committed by a person acting "under color of state law"; and 2) the conduct must deprive a person of rights privileges or immunities secured by the Constitution or laws of the United States. Holt Cargo Systems v. Delaware River Port Authority, No. CIV. A. 94-7778, 1996 WL 195390, at * 3 (E.D. Pa.

⁶ The federal habeas corpus statute requires that state prisoners first seek redress in a state forum, see Rose v. Lundy, 455 U.S. 509, 515-22(1982); 28 U.S.C.A. § 2254(b) (West 1997); see also Paulet v. Howard, 634 F.2d 117, 119 (3d Cir. 1980)(exhaustion of state remedies requires presentation to state court of facts and legal basis of claim), a requirement which also applies to petitioners who challenge their confinement to state mental hospitals. Strowder v. Shovlin, 272 F.Supp. 271, 273 (M.D. Pa. 1966), aff'd, 380 F.2d 370 (3d Cir. 1967).

Apr. 19, 1996)(citing Mark v. Borough of Hatboro, 51 F.3d 1137, 1141 (3d Cir. 1995)). Analysis of a § 1983 claim therefore begins with identification of the specific federal right allegedly infringed. Graham v. Connor, 490 U.S. 386, 394 (1989); Baker v. McCollan, 443 U.S. 137, 140 (1979). Here, plaintiff does not allege the violation of any right protected under federal law.

While the ADA does require public entities to make "reasonable accommodations" to ensure that disabled persons are not denied access to the services provided by a particular public entity, nothing in the ADA requires those entities to expand the scope of their activities to provide services for the disabled which are not provided at all by such entities. See National Coalition for Students with Disabilities Education and Legal Defense Fund v. Allen, 961 F.Supp. 129, 131 (E.D. Va. 1997)(citing Smith v. Department of Rehabilitation & Correction, 661 N.E.2d 771 (1995)). Plaintiff does not aver that NSH provides any training for dyslexia, and the ADA does not require NSH to provide such training if NSH does not provide it in the first place. Additionally, plaintiff does not contend that he is being discriminated against by reason of his dyslexia, a vital component of any ADA claim. See Kornblau v. Dade County, 86 F.3d 193, 194 (11th Cir. 1996)(to prove ADA violation, plaintiff must show disability, denial of public benefit, and that denial was by reason of plaintiff's disability); CERPAC v. Health and Hospitals Corp., 920 F.Supp. 488, 497 (S.D.N.Y. 1996); Civic Ass'n of Deaf of New York City, Inc. v. Giuliani, 915 F.Supp. 622, 634 (S.D.N.Y. 1996). As a consequence,

plaintiff has not stated an actionable claim for dyslexia training under the ADA.

Plaintiff also provides no legal support for his due process and equal protection claims. There is no authority for the proposition that mental patients have a substantive due process right to training for learning disorders such as dyslexia. In fact, the opposite may be true. Although the involuntarily civilly committed are due a higher standard of care than "criminals whose conditions of confinement are designed to punish," the Fourteenth Amendment's due process clause only requires states to provide involuntarily-committed mental patients with "minimally adequate or reasonable training to ensure safety, freedom from bodily restraint, and minimally adequate or reasonable training to further the ends of safety and freedom from restraint."⁷ Youngberg v.

⁷ Other categories of persons in state custody possess no greater rights. For example, while involuntarily-institutionalized mentally retarded persons have a right to necessary psychiatric care, United States v. Commonwealth of Pa., 902 F.Supp. 565, 598 (W.D. Pa. 1995), the failure to provide training that improves their basic care skills, absent proof that the lack of training results in the loss of a recognized liberty interest, has been found not to implicate constitutional due process concerns. United States v. Commonwealth of Pa., 902 F.Supp. 565, 617-18 (W.D. Pa. 1995). Furthermore, the failure to provide educational programs to prison inmates is generally not considered a constitutional deprivation. Newman v. State of Ala., 559 F.2d 283, 292 (5th Cir; 1977); Burnette v. Phelps, 621 F.Supp. 1157, 1159 (D. La. 1985)(stating that "there is no federal constitutional right to participate in a prison education program"); Russel v. Oliver, 392 F.Supp. 470, 474 (W.D. Va. 1975)("no federal constitutional right to vocational training exists for inmates in a correctional system"), aff'd in part, vacated in part on other grounds, 552 F.2d 115 (4th Cir. 1977); Hayes v. Cutler, 475 F.Supp. 1347, 1350 (E.D. Pa. 1979)(noting that "prison officials have no duty to provide a barbering school," that most jurisdictions find no Eighth Amendment right

Romeo, 457 U.S. 307, 319, 322 (1982); Dolihite v. Maughon, 74 F.3d 1027, 1041 (11th Cir. 1996). Plaintiff has not alleged any lack of safety or freedom from bodily restraint, and thus has not stated a cognizable due process claim.

In addition, plaintiff makes no allegations of discriminatory treatment in NSH's refusal to provide him with training for his dyslexia. "The essence of the equal protection clause is a requirement that similarly situated persons be treated alike." Huffaker v. Bucks County District Attorney's Office, 758 F.Supp. 287, 291 (E.D. Pa. 1991)(citing City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439 (1985)); Mahone v. Addicks Utility Dist. of Harris County, 836 F.2d 921, 932 (5th Cir.1988); Gobla v. Crestwood School District, 609 F.Supp. 972, 978 (M.D. Pa.1985). Plaintiff, however, does not contend that defendants treated him differently from others similarly situated. Without discriminatory treatment, there can be no violation of equal protection.

In short, NSH's denial of training for plaintiff's dyslexia is not an injury of constitutional proportions. Plaintiff's equal protection and due process claims for dyslexia training are appropriately dismissed pursuant to Rule 12(b)(6).

C. Eleventh Amendment

Plaintiff's § 1983 claims are also barred by the Eleventh Amendment. Absent congressional abrogation of state sovereign immunity or a state's consent, the Eleventh Amendment bars suits in

to attend vocational school, and that rehabilitation opportunities are not a constitutional right).

federal court in which a state is a defendant. See Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 99 (1984); Laskaris v. Thornburgh, 661 F.2d 23, 26 (3d Cir. 1981), cert. denied, 469 U.S. 886 (1984). This jurisdictional bar applies regardless of the type of relief sought, Pennhurst, 465 U.S. at 100-01, and extends to suits against departments having no existence apart from the state. See Mt. Healthy City Board of Education v. Doyle, 429 U.S. 274, 280 (1977).

The defendants named in the complaint include Norristown State Hospital, the Pennsylvania Department of Public Welfare, and the Chester County Court of Common Pleas. All three entities are considered arms of the Commonwealth of Pennsylvania and are entitled to immunity from suit under the Eleventh Amendment. See Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 238 (1985)(state agencies are entitled to Eleventh Amendment immunity); Temple Univ. v. White, 941 F.2d 201, 214 (3d Cir. 1991)(barring legal remedies against Pennsylvania's Department of Public Welfare on Eleventh Amendment grounds); Murray v. Norristown State Hospital, CIV. A. No. 89-1478, 1989 WL 36966, at *1 (E.D. Pa. Apr. 17, 1989)(holding that Norristown State Hospital, as an arm of the Department of Public Welfare, is entitled to Eleventh Amendment immunity); Reiff v. Philadelphia County Court of Common Pleas, 827 F.Supp. 319, 323-24 (E.D. Pa. 1993)(concluding that the Court of Common Pleas of Philadelphia County is an arm of the state and therefore possesses Eleventh Amendment immunity to suit)(citing Will v. Michigan Dept. of State Police, 491 U.S. 58, 70 (1989)); see also Landers Seed Co.

v. Champaign Nat'l Bank, 15 F.3d 729, 731-32 (7th Cir.) (holding that Eleventh Amendment bars federal suits against state courts), cert. denied, 513 U.S. 811 (1994). In addition, Pennsylvania has expressly withheld its consent to be sued in federal court. Pa. Stat. Ann. tit. 42, § 8521(b) (1996).

Plaintiff argues that because Chester County funds the Chester County Court of Common Pleas, Chester County, not Pennsylvania, is the real, substantial party in interest. Pl. Resp. to NSH's Mot. for Summ. Judg. at 5. Plaintiff is incorrect. Regardless of their source of funding, Pennsylvania's courts of common pleas are arms of the state and entitled to Eleventh Amendment immunity. See Robinson v. Court of Common Pleas of Philadelphia County, 827 F.Supp. 1210, 1216 (E.D. Pa. 1993)(holding that, notwithstanding their source of funding, Pennsylvania's courts of common pleas are arms of the state and enjoy Eleventh Amendment immunity); Reiff v. Philadelphia County Court of Common Pleas, 827 F.Supp. 319, 322-23 (E.D. Pa. 1993).

Therefore, even if plaintiff had stated a valid § 1983 claim, all named defendants are immune to suit in federal court for injunctive, declaratory and monetary relief under the Eleventh Amendment.

D. Younger Abstention

The Chester County Court also argues that this court should abstain from exercising jurisdiction over plaintiff's claims pursuant to Younger v. Harris, 401 U.S. 37 (1971). Three criteria must be satisfied before Younger abstention is appropriate: (1)

there must be an ongoing state judicial proceeding to which the federal plaintiff is a party and with which the federal proceeding will interfere; (2) the state proceeding must implicate important state interests; and (3) the state proceeding must afford an adequate opportunity to raise federal claims. FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 843 (3d Cir. 1996); Olde Discount Corp. v. Tupman, 1 F.3d 202, 211 (3d Cir. 1993). All three requirements are met in this case.

First, the initial order of involuntary commitment and subsequent annual review of plaintiff's status by the Chester County Court pursuant to Pennsylvania's Mental Health Procedures Act, Pa. Stat. Ann. tit. 50, § 7304(g)(2) - (4)(1969 & Supp. 1997)⁸, constitute an ongoing state judicial proceeding to which the plaintiff is a party. Pennsylvania law permits the involuntary commitment for up to one year of persons who are found not guilty of murder by reason of insanity. Pa. Stat. Ann. tit. 50, § 7304(g)(2)(1969 & Supp. 1997). These persons may not be released during that period without court permission, Pa. Stat. Ann. tit.

⁸ The MHPA provides for the court-ordered involuntary commitment of a person for up to one year where the person's severe mental disability gave rise to murder or other serious crimes, and that person was found incompetent to stand trial or not guilty by reason of insanity. 50 Pa. Stat. Ann. § 7304(g)(2) (1969 & Supp. 1997). Section 7304(g)(4) requires that, for persons committed under § 7304(g)(2), when the period of court-ordered involuntary commitment is about to expire and neither the director of the mental health institution nor the county administrator intends to apply for an additional period of involuntary treatment, or if the director at any time concludes the person is no longer severely mentally disabled or no longer requires treatment, the director file a petition with the court for the conditional or unconditional release of the person.

50, § 7304(g)(3)(1969 & Supp. 1997), nor may they be released at the expiration of their one-year commitment without court approval. Pa. Stat. Ann. tit. 50, § 7304(g)(4)(1969 & Supp. 1997). At the end of the one-year time period, the court may order further involuntary commitment. Id. Given the continuous nature of the proceedings authorized by the MHPA, the Chester County Court's involvement in plaintiff's involuntary commitment may properly be regarded as an "ongoing judicial proceeding." See Nelson v. Murphy, 44 F.3d 497, 501 (7th Cir. 1995)(finding that the Illinois court's supervision of confined persons found not guilty by reason of insanity constituted "continuations of the original criminal prosecutions" for purposes of Younger).

Second, plaintiff's involuntary commitment proceedings implicate important state interests. As defendant Chester County Court noted in its brief, Pennsylvania court decisions regarding involuntary commitments are entirely controlled by state law. See Pa. Stat. Ann. tit. 50, §§ 7301 - 05 (1969 & Supp. 1997). Moreover, the purpose of the Mental Health Procedures Act containing those provisions is to "further the policy of the Commonwealth of Pennsylvania 'to seek to assure the availability of adequate treatment to persons who are mentally ill.'" Hahnemann Univ. Hosp. v. Edgar, 74 F.3d 456, 463 (3d Cir. 1996)(quoting Pa. Stat. Ann. tit. 50, § 7102). The Third Circuit has recognized the primacy of state law in this area, stating that "it is not the place of this court to create judicial exceptions to a Pennsylvania statute that has been strictly construed by the state's courts."

Id. at 464. As a consequence, the second requirement of Younger -- that the state proceeding at issue implicate important state interests -- is satisfied.

Lastly, the Chester County Court's involuntary commitment proceedings offered plaintiff an adequate opportunity to raise his federal claims. The MHPA expressly states that persons in treatment are entitled to all the rights provided under Pennsylvania law. Pa. Stat. Ann. tit. 50, § 7113 (1969 & Supp. 1997). The Act further provides that

[a]ctions requesting damages, declaratory judgment, injunctions, mandamus, writs of prohibition, habeas corpus, including challenges to the legality of detention or degree of restraint, and any other remedies or relief granted by law may be maintained in order to protect and effectuate the rights granted under this act.

Id.

Indeed, Pennsylvania courts have noted that "the structure of the Act evidences a legislative intent to create a treatment scheme under which the patient's procedural protections expand progressively as the deprivation of his liberty gradually increases." Commonwealth v. C.B., 452 A.2d 1372, 1374 (Pa. Super. 1982). In Pennsylvania, involuntary civil commitment is only possible "in accordance with due process standards." Id.

Furthermore, Pennsylvania courts have concurrent jurisdiction

with federal courts to hear § 1983 claims⁹ and ADA claims.¹⁰ Thus, plaintiff could have pursued the claims comprising the subject matter of this action in his state court involuntary commitment proceedings. See Commonwealth v. Helms, 506 A.2d 1384, 1387 (1986)(common pleas court judges have jurisdiction under Mental Health Procedures Act to initiate as well as review legal proceedings relating to commitment). It is immaterial whether plaintiff in fact raised those claims with the Chester County Court, as Younger abstention does not require that litigants have actually presented their federal claims to the state tribunal. See Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 15-17 (1987); Guarino v. Larsen, 11 F.3d 1151, 1161 n.7 (3d Cir. 1993)(citing Pennzoil for the proposition that "where a litigant has been summoned to participate in a state court proceeding . . . [the] litigant must present all of his or her claims arising from the same transaction in order to avoid waiving those claims he or she does not raise."). In any case, plaintiff does not allege that the Chester County Court refused to entertain his federal claims. To the contrary, after his hearing before the Chester County Court, plaintiff decided to forego his additional state court remedies, voluntarily withdrawing his Superior Court appeal of the Chester County Court's recommitment order. In re Richard Greist, No. 3167 PHL 1996,

⁹ Bennett v. White, 865 F.2d 1395, 1406 (3d Cir.), reh'g denied, cert. denied, 492 U.S. 920 (1989).

¹⁰ Jones v. Illinois Cent. R. C., 859 F.Supp. 1144, 1145 (N.D. Ill. 1994).

Praeceptum to Withdraw Appeal (Pa. Super. Ct. Jan. 27, 1997). Neither the pleadings nor the Chester County Court's recommitment order indicate whether plaintiff presented his federal claims to the Chester County Court. This is immaterial. If plaintiff in fact presented those claims, Younger will still not allow him to "procure federal intervention by terminating the state judicial process prematurely -- foregoing the state appeal to attack the trial court's judgment in federal court." New Orleans Publ. Serv., Inc. v. Council of City of New Orleans. 491 U.S. 350, 369 (1989). This court cannot consider plaintiff's federal claims if the proper forum for their review is the Pennsylvania Superior Court.¹¹ Accordingly, the third requirement of Younger, availability of a state tribunal to address his federal claims, has been met.

As alternative grounds for dismissal of plaintiff's claim for release from involuntary commitment, the court may thus abstain from exercising its jurisdiction over plaintiff's federal causes of action.

E. Access to the Courts

The United States Constitution guarantees convicted offenders the right to meaningful access to the courts. Bounds v. Smith, 430 U.S. 817, 820, 823 (1977). Persons who are involuntarily confined to mental institutions also possess this right. Ward v. Cort, 762 F.2d 856, 858 (10th Cir. 1985); Murray v. Didario, 762 F.Supp. 109,

¹¹ Although issues not raised in the lower court are waived and cannot be raised for the first time on appeal in a matter involving civil commitment. In re Wilson, 449 A.2d 711, 711 (Pa. Super. Ct. 1982).

109 (E.D. Pa. 1991). In Bounds v. Smith, the Supreme Court held that the state must provide detainees with either adequate law library facilities or adequate assistance from persons trained in the law. 430 U.S. at 823. In any case, "[m]eaningful access' to the courts is the touchstone." Id.

Plaintiff did not have access to a law library for the preparation of his complaint. Pl. Compl. at 8, para. 29. Since then, however, "when plaintiff has requested to leave the grounds of NSH and be escorted to a law library in the Philadelphia area, defendant NSH has generally complied with his requests." Def. NSH's Mot. to Dis. at 7. Plaintiff acknowledges this access in his responsive pleading. Pl's. Resp. to Def. NSH's Mot. for Summ. Judg. at 8. Plaintiff still complains, however, that library access is only available at his continued insistence and at NSH's convenience, "notwithstanding the time requirements of the case before the District Court, nor the additional time necessary for the Plaintiff to research the pertinent law(s) due to his various disabilities." Id. at 8-9. Implicit in his response is the admission that he has suffered no injury as a result of NSH's past limitations on his law library access.¹² Id. at 8.

"Adequate" access is all the law requires under Bounds, 430

¹² Plaintiff argues, "[d]id Defendant's actions cause injury? It is not a question of injury. . . it is a question of deprivatation [sic] of Constitutional Rights. Deprivatation [sic] of the Constitutional Rights of any Citizen is an injury in and of itself." Pl's. Resp. to Def. NSH's Mot. for Summ. Judg. at 8. This argument is in error, as "actual injury" must be shown to make out an access to the courts claim. Lewis v. Casey, -- U.S. --, 116 S.Ct. 2174, 2180, 135 L. Ed. 2d 606 (1996).

U.S. at 823. In the Third Circuit, the standard in applying a prisoner's constitutional right of access to the courts is whether the legal resources available to the prisoner will enable him to identify the legal issues that he desires to present to the relevant authorities, including the courts, and to make communications with and presentations to those authorities understood. Abdul-Akbar v. Watson, 4 F.3d 195, 203 (3d Cir. 1993). Plaintiff's assertions of inconvenience do not amount to inadequate access in light of the fruit of his legal labors¹³ and NSH's

¹³ Plaintiff has produced: a pro se complaint making the court aware of his ADA and § 1983 claims; an application to proceed in forma pauperis; a discovery request; a motion for default; and responses to both the Chester County Court's motion to dismiss and NSH's motion for summary judgment.

accommodation of his requests for law library access. Because NSH now provides plaintiff with adequate access to law library facilities, plaintiff's claim that he has been denied access to the courts by Norristown State Hospital is dismissed as moot.

III. Conclusion

In consideration of the foregoing, defendants' motions to dismiss are GRANTED.

plaintiff's complaint is **DISMISSED** as to all claims and all parties.

BY THE COURT:

JOSEPH L. McGLYNN, JR., J.